

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT CHARLES BURNS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 12cv1075 BTM(WVG)

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS**

Petitioner has filed a Petition for a Writ of *Audita Querela* pursuant to the All Writs Act. Petition has also filed a motion to proceed in forma pauperis.

It appears that Petitioner has sufficient funds in his account to pay the filing fee. Therefore, Petitioner's motion to proceed in forma pauperis is **DENIED**.

If Petitioner wishes to proceed with this lawsuit, Petitioner must pay the \$350 filing fee in full. However, the Court cautions Petitioner that the Ninth Circuit has held that a prisoner may not challenge a federal conviction or sentence by way of a petition for a writ of *audita querela* when that challenge is cognizable under § 2255. United States v. Valdez-Pacheco, 237 F.3d 1077, 1080 (9th Cir. 2001). The fact that the prisoner is precluded from raising his claims in a § 2255 motion by the provisions of the Anti-terrorism and Effective Death Penalty Act of 1996 that bar successive petitions, does not make the remedy of a writ of *audita querela* available to him. Id.

1 If Petitioner still wishes to proceed with this lawsuit, Petitioner must pay the \$350 filing
2 fee on or before **July 2, 2012**. If Petitioner fails to do so, the Court will dismiss this case.

3 **IT IS SO ORDERED.**

4 DATED: June 4, 2012

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6 BARRY TED MOSKOWITZ, Chief Judge
7 United States District Court

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